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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,312	08/04/2003	Asaf Bareket	25624	3409

7590 10/06/2004

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EXAMINER

LEV, BRUCE ALLEN

ART UNIT PAPER NUMBER

3634

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,312

Applicant(s)

BAREKET, ASAF

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

BRUCE A. LEV
PRIMARY EXAMINER

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

Claim 6 is objected to because it depends from canceled claim 5.

Claim Rejections - 35 USC § 112

Claims 1, 2, and 9-11 are rejected under 35 U.S.C. **112**, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. For example, the preamble clearly indicates that the subcombination of a “ladder” is being claimed. However, the body of the claim positively recites a “truck”, e.g., “pivotally and releasably secured on...the truck” (claim 1, lines 6-7), “extend over the tailgate” (claim 1, line 9), “attached to the tailgate” (claim 2, line 2), “attached to the truck” (claim 2, line 2), “upon opening the tailgate” (claim 9, line 2), “where the ladder is fastened to...the truck” (claim 9, line 3), “the...truck...is...a bumper of the truck” (claim 10), and “the lower portion of the truck...is a lower...portion of...the truck” (claim 11), which indicates the claims as being drawn to a combination of the “ladder” and the “truck”. Therefore, the applicant is required to clarify what the claims are intended to be drawn to, i.e., either the “ladder” alone or in combination with the “truck”, and to present the claims with the language which is consistent with the invention. The applicant should note that “*adapted to be*” language may be appropriate if claiming the “ladder” alone (i.e., “adapted to be secured to”).

Claim Rejections - 35 USC § 102

Claims 1-4, 6, 7, 9-11, 15, and 17 are rejected under 35 U.S.C. ***102(b)*** as being anticipated by ***Peacock 4,757,876***.

Peacock sets forth a ladder adapted to be releasably and pivotally secured on the tailgate of a truck, wherein the ladder comprises a first leg portion having two parallel side rails with at least one rung; the first leg portion pivotally coupled to a second leg portion comprising either a single support leg (viewed as the left side rail) or two side rails; the legs being lockably pivotally coupled (in the extended position); and the legs being "extendible". The applicant should note that the process by which an apparatus is made is NOT given patentable weight within an apparatus claim. Therefore, the process limitation of the rails being "pre-fabricated" is not given patentable weight within the instant claims.

Claim Rejections - 35 USC § 103

Claims 8 and 12-14 are rejected under 35 U.S.C. ***103(a)*** as being unpatentable over ***Peacock in view of Purkapile 4,773,503***.

Peacock sets forth the ladder, as advanced above, except for the hinge being fixable at a plurality of intermediate, angular positions. However, ***Purkapile teaches*** a ladder having upper and lower legs being fixable at a plurality of intermediate, angular positions. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pivoting connection of Peacock by forming it as being fixable at a plurality of intermediate, angular positions, as taught by Purkapile, in order to adapt the ladder to un-level and different height surfaces.

Response to Amendment

Applicant's remarks filed September 16, 2004 have been fully considered but they are not deemed to be persuasive.

As concerns remarks pertaining to the ladder of Peacock not capable of being deployed via the movement of its tailgate, the examiner takes the position that since the tailgate of the truck is *not* set forth in the instant claims as part of the invention, comparisons thereto are *not* given patentable weight within the claims. As per "operative positions", the examiner points out that two "operative positions" are illustrated in Figures 1 and 3, wherein one position is viewed as when connected to the truck bed via members 39 and 40, and the second is the "extended" position.

As concerns remarks pertaining to the combination of Peacock in view of Purkapile, the examiner reiterates the position that Purkapile teaches a ladder having upper and lower legs being fixable at a plurality of intermediate, angular positions. Therefore, it would have been obvious to modify the pivoting connection of Peacock by forming it as being fixable at a plurality of intermediate, angular positions, in order to adapt the ladder to un-level and different height surfaces.

Conclusion

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

THIS ACTION IS MADE FINAL. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

9/30/2004

A handwritten signature in black ink, appearing to read 'B. Lev', with a large loop on the 'B' and a stylized 'Le'.

Bruce A. Lev
Primary Examiner
Group 3600